

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JAMES L. SMITH
CLERK

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
V.)
)
SAMUEL A ASHLEY JR..)
)
Defendant.)
-----)

Case No. 1:04 CV 689
Criminal No. 1:02-CR-22

Chief Judge Beckwith

DEFENDANT'S SECOND RESPONSE TO THE
GOVERNMENT'S REPLY CONCERNING PERSONAL
PROPERTY

Now comes the defendant, Sam Ashley, pro se, who respectfully submits this second response to the government's reply concerning the defendant's personal property.

The government in an earlier motion quoted some local rules that the defendant was unaware of, upon receipt of that motion, the defendant asked the clerk to send him a copy, the requested documents arrived on February 22, 2005.

After studying the local rules the defendant has learned that under local rules prohibit the government from trying to have a 20 month old order modified.

RESPECTFULLY SUBMITTED

Sam Ashley

MEMORANDUM

In April, 2003, the defendant filed a motion for the Court to order the government to turn over all property that was not

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forfeited in the criminal proceedings against the defendant, the Court approved the Motion in June of 2003, the Honorable Judge Susan D'Lott ordered the F.B.I. to turn over all of the defendant's property to his counsel of record. At that time, the counsel of record was Kevin Shad, who was the defendant's appellate attorney.

The government did not object to the motion when it was filed, the government was served a copy of both the motion and the Court's order. At no time did the government object to the return of the defendant's property.

The defendant was unaware that the motion even got approved until almost a year later. The defendant then filed a series of motions trying to get an order from the court to once again return the defendant's property. That takes us to the last motion that the government filed, asking for the order to be modified until after the defendant's \$2255 is ruled on.

First, it is important to remember that the Honorable Judge D'lott issued this order while the defendant's direct appeal was pending, without any objections whatsoever about the property being some type of evidence. The government's position that they have suddenly come up with are moot, invalid, insulting, and against all the rules. But yet, they continue to harass the defendant by not abiding by the Court's order.

See, United States District Court Southern District Of Ohio Local Rule 7.2 (2):

Opposing and reply memoranda. Any memorandum in opposition shall be served within twenty-one (21) days from the date of service set forth in the certificate of service attached to the motion. Failure to file a memorandum in opposition may be cause for the Court to grant any motion, other than one which would result directly in entry of final judgment or an award of Attorney fees. A reply memorandum may be

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served within eleven (11) days after the date of service of the memorandum in opposition. No additional memoranda beyond those enumerated will be permitted except upon leave of court for good cause shown.

The government failed to ask for leave to file their sudden opposition motion to the 20 month old order.

THE DEFENDANT HAS A RIGHT TO HIS PROPERTY

A person aggrieved by an unlawful federal search and seizure may move the District Court for the district in which the property was seized for the return of the property, on the ground that such person is entitled to lawful possession of the property. See, **Fed.R. Crim. Proc. 41(c)**.

The proper remedy for an unconstitutional seizure and retention of property is the return of the property.

Both state and federal constitutional provisions protect individuals from unreasonable searches and seizures, in order to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.

The Fourth Amendment of the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause-----"

For all of the reasons set forth above, the defendant respectfully requests this Honorable Court to enforce the order of June of 2003, and again order the F.B.I. to turn over all of the property that the government is in possession of.

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RESPECTFULLY SUBMITTED

Sam Ashley

Sam Ashley #40656-061
F.C.I.
P.O. Box 6001
Ashland Ky 41105

CERTIFICATION

I do hereby certify that a copy of this motion has been sent VIA Inmate Legal Mail at F.C.I. Ashland to the Asst. US Attorney James Coombe at 221 East Fourth Street, Suite 400 Cincinnati, Ohio 45202 on this 23rd day of Feb 2005.

Sam Ashley